

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1077 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PUNJAB NATIONAL BANK

Versus

PRAN GAURI SURENDRABHAI THAKORE

Appearance:

MR AY KOGZE for MR SV RAJU for Appellants

MR AK CLERK for Respondent No. 1

DELETED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/98

ORAL JUDGEMENT

1. This first appeal under section 96 of the Civil Procedure Code, 1908, is directed by the appellants against the judgment and decree passed in special civil suit No.278/79 by the 2nd Joint Civil Judge (S.D.) at Nadiad dated 31-12-1984 under which the suit of the plaintiff-respondent was partly decreed. The order of dismissal of the husband of the plaintiff-respondent from

the services was declared to be null and void, arbitrary and against the principles of natural justice. A decree for Rs.80,219-50 and costs of the suit together with interest at the rate of 6% on principal amount has also been passed in favour of the plaintiff-respondent.

2. The facts of the case are to be taken in nutshell for the purpose of appreciating the contentions made by the learned counsel for the parties, which are as under:

The plaintiff, respondent herein, is a widow of late Surendrabhai Thakorelal Thakore, who was in service of the appellant, Punjab National Bank. He was to retire from the bank services in the year 1971 but the extension in his services was granted. He was holding the post of Officer on Special Duty at Cambay Branch of the appellant-bank. The husband of the plaintiff-respondent was due for his retirement from the services after completion of the extended period on 6-11-1973. He was given chargesheet on 8-6-1973 for alleged grave and serious misconduct committed during his tenure as Bank Officer to give effect to the objectives of Bank Nationalisation Schemes he has made agricultural advances to agriculturist residing in the village concerned. An F.I.R. has been lodged in the C.B.I. against the husband of the plaintiff-respondent and after investigation of the matter, a chargesheet has been submitted against him and Sarpanch Maganbhai under section 120B, 420, 477A of Indian Penal Code and under section 5 (2) of the Prevention of Corruption Act. The case was registered as Special Case No.10/77. The husband of the plaintiff-respondent was placed under suspension on 15-6-1972 and he was served with a show cause notice dated 11-10-1973 to which the reply was submitted on 28-10-1973. He was given a chargesheet for the departmental inquiry on 18-6-1973 and he was dismissed from the services vide order dated 24-10-1973. Further order has been passed for forfeiture of gratuity and bank's contribution to provident fund etc. The criminal case against the husband of the plaintiff-respondent was decided on 18-8-1977 and he was acquitted. The Sarpanch was convicted for the offence as alleged against him. It is unfortunate that after acquittal he has expired on 26-8-1977. The plaintiff-respondent filed the suit out of which this appeal has arisen and the learned trial court decreed the suit as stated in the opening para of the judgment. Hence, this appeal before this Court by the appellants.

3. Learned counsel for the appellants made two fold contentions in this appeal. It is contended that the

widow of the delinquent officer has no right to file the civil suit challenging therein the dismissal of her husband from the services of the bank. It has next been contended that the misconduct of the delinquent officer resulted in heavy monetary loss to the Bank which amount could have been recovered from the dues payable i.e. by withholding of gratuity etc. and contribution of employees toward the provident fund. The court below has committed serious error in passing the decree in favour of the plaintiff-respondent.

4. The counsel for the plaintiff-respondent replying to these contentions of the learned counsel for the appellants contended that the defendants-appellants have not raised any plea regarding the maintainability of the suit in the trial court and they cannot be permitted to raise this plea before this Court in appeal first time. It has next been contended that this suit was maintainable by the widow as it results in not only the dismissal of her husband from bank services but the consequence forfeiture of the amount of gratuity, contribution of the employees towards provident fund and the amount of salary. The plaintiff-respondent being the legal heir of the employee of the bank is a beneficiary of this amount and she has all the right to file the civil suit for declaration of the dismissal of her husband from the services to be bad. When the dismissal is bad then naturally the consequential reliefs could have been of payment of the amount of gratuity, employee's contribution towards the provident fund and salary and that amount may be received by her. Replying to the second contention of the learned counsel for the appellants, Shri Clerk, learned counsel for the respondent contended that the husband of the respondent was chargesheeted with grave and serious misconduct which relates to the charges of corruption and major penalty has been inflicted. It could have been done only after holding a full-fledged departmental inquiry, which has not been done in the present case. The principles of natural justice have been violated and the court has not committed any error in granting the relief to the plaintiff-respondent.

5. In the rejoinder, the learned counsel for the appellants contended that the right to challenge the dismissal was a right in persona, which right dies with the death of the employees, and his heirs and legal representatives even if they are taken to be beneficiaries of the amount which would have been paid to him, have no right to file the civil suit. On admission of the guilt, it was not obligatory on the part of the

employer to hold the departmental inquiry.

6. Learned counsel for the respondent contended in the last that if the suit is held to be not maintainable then the plaintiff-respondent cannot be made remediless. If the suit was not maintainable the writ petition would have been the remedy and jurisdiction to hear the writ under Article 226 of the Constitution lies with this court and as the order of dismissal is void-ab-initio or nullity the court may not interfere in the matter otherwise the dismissal of appeal will amount to restoration of the null and void order or in the alternate, this court may exercise its extraordinary jurisdiction and set aside that order of dismissal from the services of the husband of the plaintiff-respondent.

7. I have given my thoughtful consideration to the rival contentions advanced by the learned counsel for the parties in support of their cases.

8. Learned counsel for the appellants with all the fairness on his part admitted that the charges which have been levelled against the husband of the plaintiff-respondent were of serious and grave nature and on proof of the same, the minimum penalty would have been only of removal or dismissal from the services. He admits that before dismissing the husband of the plaintiff-respondent from services, full-fledged domestic inquiry has not been conducted by the appellants. Learned counsel for the appellants further submits that the committee has called upon the explanation of the delinquent officer and after considering the explanation on the basis of his admission it was considered to be a case of grave and serious misconduct and he has been ordered to be dismissed from the services. He urged that in the criminal case, the delinquent officer, the husband of the plaintiff-respondent was not honourably acquitted. He was given the benefit of doubt and that cannot be equated with the Honourable acquittal. He further admits that in the criminal case, the Sarpanch was convicted of the offences under sec. 120B, 420 and 477A of the Indian Penal Code and under section 5(2) of the Prevention of Corruption Act. He does not dispute that the plaintiff-respondent would have been certainly the beneficiary of the amount of gratuity and the employee's share of contribution towards the provident fund and the arrears of salary etc.

9. In these factual matrix now I may proceed to consider the rival contentions made by the learned counsel for the parties.

10. In this appeal, though larger issue has been raised by the learned counsel for the appellants regarding the maintainability of the suit with reference to the right in persona which dies with the death of the person concerned but I do not consider it to be a fit and appropriate case where this point has to go in detail. The appellants were not very serious about this point in the trial court. From the judgment of the trial court, I do not find that any such issue has been framed by the court for adjudication. Non-framing of the issue on this point compelled me to draw an inference that this point was not pressed or this point deemed to have not been pressed by the appellants. This point, as per the case of the appellants, goes to the root of the matter and it should have been very specifically raised and pressed and it should have been insisted by the appellants before the trial court to decide it to be a preliminary issue. The very fact that very specifically this point was not raised as it is borne out from the fact that issue has not been framed goes to show that the appellants were also not very serious on this issue. They appears to have insisted for the decision on merits rather than to nonsuit the poor lady on this technical ground. This issue which goes to the root of the suit and in case finding thereon is given in favour of the appellants then the suit would have been dismissed at the threshold and other issues raised therein need not to be decided. In such matter, proper course would have been and it is also permissible under the C.P.C. to take it to be a preliminary issue and decide the same. Be that as it may.

11. I find sufficient merits in the contention of Shri Clerk, learned counsel for the respondent, that in case this point would have been raised at the initial stage of the suit and would have been decided by the trial court against the plaintiff, she would have availed of another remedy available to her but now after about 20 years of the filing of the suit if the plaintiff-respondent is non-suited on this ground it will highly prejudice her case and poor lady now will suffer heavy monetary loss. It is true that such an issue of maintainability of the suit should have been decided at the early stage and not at the appellate stage and that too after about more than 20 years, non-suiting a person on this ground will certainly adversely affect her. Otherwise also, she could not have been rendered remediless. The appellant-Punjab National Bank is a nationalised bank and it is a State or instrumentality of State or an Agency of State within the meaning of Article

12 of the Constitution of India and it was amenable to writ jurisdiction of this court. In such matter, I find sufficient merits in the contention of Shri Clerk the learned counsel for the respondent that where the suit was held to be not maintainable by the plaintiff-respondent she could have approached this court for appropriate relief. This court could have exercised extraordinary jurisdiction under Article 226 of the Constitution and it can also exercise the appellate jurisdiction under C.P.C.. These two are distinct and separate jurisdictions to be exercised by one and the same court. In the first appeal no doubt those grounds which may be taken for the purpose of nonsuit of the petitioner in the writ petition under Article 226 of the Constitution may not be available but nevertheless this court cannot ignore the fact that the acceptance of appeal on this ground certainly results in the restoration of a void-ab-initio order in case where the court confirms the judgment of the trial court on other issues. A larger issue for debate arises in this case whether those principles applies to extraordinary jurisdiction remedy before this court can be made applicable to the civil suits or not and in the appropriate case it would be considered. This matter pertains to forfeiture of the amount of gratuity and the employee's contribution to provident fund account of the employee, the difference of pay for 18 months etc. and as such a poor lady should not be nonsuited at this stage on this ground and more so when this ground was not pressed before the trial court by the appellant.

The second contention raised by the learned counsel for the appellants is also devoid of any substance.

12. On being asked by the court, learned counsel for the appellants contended that the admission of the guilt by the delinquent officer, the husband of the plaintiff-respondent is there in Ex.53. It is clear from the statement of the witness one Mr. Chaudhary examined at Ex.93 that an opportunity of personal hearing was not given to the deceased delinquent officer. He further admits that the deceased delinquent officer prayed for time in reply to show cause notice but no time was granted to him. Further it comes out from the statement that the copies of statements recorded by Mr. Agnihotri were not supplied to the delinquent officer though in later part of the statement he has tried to change from his original version. One important admission comes from his statement that out of 107 cases, the C.B.I. chargesheeted 21 cases and those 21 cases were not

selected by the Bank for departmental inquiry. He further admits that the delinquent officer was given the chargesheet on 18-7-1973. Shri Agnihotri has been examined at Ex.109 who was Agricultural Inspector in Inspection and Control Division, New Delhi. He admits in his statement that he does not know whether the copies of statement of Borrowers were supplied to the delinquent employee or not. He further admits that he do not appear before the Personnel Committee at Delhi. The inquiry which has been conducted by him, the report thereof was admittedly not given to the delinquent employee.

13. Next comes the witness Bhelabhai Mamtora at Ex.122. He was Assistant Manager of the Bank. Last witness is Dwarkanath Kanaiyalal Sharma at Ex.132. From the evidence which has come on record I find that the appellants have failed to prove that the husband of the plaintiff-respondent has been given full opportunity of producing his defence. It has not come on the record that any Inquiry Officer has been appointed and inquiry according to the principles of natural justice has been conducted. The learned trial court has found that in the criminal case, the delinquent officer has been acquitted. The delinquent officer has taken the defence that he was not in any manner responsible for all these alleged loans but he has been trapped by the Sarpanch and his only mistake is that he has relied on the representative of people. His theory finds support from the judgment of the criminal court. His version was recorded and Sarpanch concerned was convicted. It is true that the judgment of the criminal court is not taken to be a judgment of exoneration of charges of misconduct in the departmental inquiry of the concerned delinquent officer but in the present case this judgment has been produced on record and this can be looked into to see that the delinquent officer has been acquitted and Sarpanch has been charged for the charges of cheating and preparation of forged documents etc.. The delinquent officer has unblemished service record of 31 years on which also there is no dispute. Looking to the seriousness of charges, the learned trial court has not committed any error in holding that the dismissal has been made in violation of the principles of natural justice. The learned trial court further has not committed any error in holding that in the departmental inquiry initiated against the delinquent officer he was not given sufficient opportunity to defend himself to reply the chargesheet and to lead his own evidence and to prove his innocence.

14. Learned counsel for the appellants is also not

disputing the fact that the inquiry has not been conducted in the present case on the charges framed against the delinquent employee but his case is that it was not necessary as the delinquent officer admitted his guilt. I do not consider it to be appropriate to go and decide the question - whether the delinquent employee or officer if admits his guilt the departmental inquiry has to be conducted or not. It is specific case of the appellants that the respondent has admitted his guilt. The only material in support of this contention is document Ex.53 on which reliance has been placed. This document is of date - 6/ 1972 and from the reading of this document, I find that it is in fact the letter sent by the delinquent officer after receiving the letter of his suspension from services. This is clear from the first sentence which the delinquent officer has written in this letter - " I am in receipt of your above letter suspending me with immediate effect till further notice". To examine this contention of the learned counsel for the appellants, I consider it to be appropriate that this letter may be reproduced in this judgment.

I am in receipt of your above letter suspending
me with immediate effect till further notice.

I beg to state the reasons given in the same
letter viz. serious irregularities and alleged
wrong acts were neither deliberate nor
intentional on my part.

The writings voluntarily given by the Sarpanch
Shri Maganbhai Rambhai Patel would show that he
had deliberately tried to defraud the Bank and
has put the Bank to a great loss. My this
contention has been fully understood by your
goodselves as can be seen from your letter
No.5594 dated 24.11.71. Thus it will be clear
that the reasons given in the suspension order to
me are not proper and do not in with the true
affairs found out from the admissions made by the
Sarpanch Shri Maganbhai Rambhai Patel.

I beg to state that Cambay Office letter dated
13.9.71 ref: 285, addressed to B/O. Baroda
would also satisfy your goodselves that I have
not deliberately or intentionally acted against
the interests of the Bank. It is my misfortune
that I was misled by a person of the Standing of
Sarpanch Shri Maganbhai Patel whose integrity and
financial position were such that nobody could
have doubted that he would ought to be a man who

would go to the length of defrauding the Bank by criminal action.

During my service in the Bank since 1931, there had never been any occasion wherein I have been found acting against the interests of the Bank. I am due to retire within a short time and it is not likely that at the fag end of my career I would risk or do any act knowingly or intentionally which would go against my own interest, and interests of the Bank.

You would have observed from the correspondence that has passed between Cambay office and authorities, since the matter came to my knowledge, that I have always tried my best to safeguard the Bank interests.

I, assure Sir, I will endeavour my best and help the Bank in overcoming the present state of affairs created by the criminal acts of the Sarpanch.

From the reading of this letter, I do not find any admission of the delinquent officer of his guilt. Contrary to it he has repeatedly stated that he has not committed any misconduct deliberately or intentionally. He has stated that Sarpanch Shri Maganbhai Rambhai Patel has tried to defraud the bank and has put the bank to loss. He has made reference to the letter of the bank where this contention of the delinquent officer has been understood. The repetition of the officer in the letter that he has not deliberately or intentionally acted against the interest of the Bank and it is his misfortune that he was mislead by a person like Sarpanch whose integrity and financial position was such that nobody could have doubted and he would have ought to be man of trust and not a man defrauding the bank by criminal action. He has given out that during his services in the Bank since 1931 there had never been any occasion where he had been found acting against the interest of the Bank. He has written in the letter that he is due to retire within a short time and it is not likely that at the fag end of his career he would act knowingly or intentionally which would go against his own interest and the interest of the bank. On reading of the document carefully I do not find anything therein where it can be said that the delinquent officer has admitted his guilt. What he stated that he has not done anything deliberately or intentionally. He has not acted in the manner where the bank suffers. This letter if read as a whole gives

out that his plight was that he has been trapped by Sarpanch. Sarpanch was the person who has defrauded the bank and put it to financial loss. This fact appears to be true as Sarpanch has been convicted for the offence under section 420 and 477A of the Indian Penal Code. So from this letter, the defence of the appellants not to hold inquiry in the matter of an alleged serious misconduct which has culminated in the dismissal of delinquent officer from his services is not justified. It is a case where the bank has not acted fairly, reasonably and in accordance with the principles of natural justice and rightly the court below has held the order of dismissal to be null and void.

No other point has been raised by the learned counsel for the appellants.

15. In the result, this appeal fails and the same is dismissed. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-